

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

JESSICA J. TAYLOR,)
Plaintiff,)
v.) CASE NO.: 3:22-CV-01369-SAL
EQUIFAX INFORMATION SERVICES,)
LLC, EXPERIAN INFORMATION)
SOLUTIONS, INC., and HIGHER)
EDUCATION LOAN AUTHORITY OF THE)
STATE OF MISSOURI, d/b/a MOHELA,)
Defendants.)

MOHELA'S MOTION FOR JUDGMENT ON THE PLEADINGS

COMES NOW the Higher Education Loan Authority of the State of Missouri (“MOHELA”), pursuant to FED. R. CIV. P. 12(c), and moves for judgment on the pleadings with respect to Counts I, II, and V of Plaintiff Jessica J. Taylor’s (“Plaintiff”) First Amended Complaint (Dkt. 26). In support of its Motion, MOHELA states:

1. On or about March 28, 2022, Plaintiff filed her Complaint in state court.
2. On April 28, 2022, Defendant Trans Union, LLC removed the lawsuit to federal court.
3. On May 25, 2022, MOHELA filed its Answer and Affirmative Defenses (Dkt. 21) and contemporaneously filed its original motion for judgment on the pleadings (Dkt. 22).
4. On June 7, 2022, Plaintiff filed her response to MOHELA’s motion for judgment on the pleadings (Dkt. 27) and requested that MOHELA’s motion be denied as moot because Plaintiff contemporaneously filed a First Amended Complaint (“FAC”) (Dkt. 26).

5. The FAC amends and supplements Plaintiff's background factual allegations, but does not materially amend the alternative claims that Plaintiff purports to bring against MOHELA.

6. On June 20, 2022, MOHELA filed its Answer and Affirmative Defenses to the FAC.

7. As it pertains to the claims against MOHELA, the pleadings are now closed.

8. This is an alleged identity theft case. Plaintiff alleges that she learned that another individual applied for several student loans that were attributed to Plaintiff. *See* FAC, at ¶ 22-33.

9. The student loans at issue were approved, funded, and are owned by the United States Department of Education ("Department") under the William D. Ford Direct Loan Program ("Direct Loan Program" or "Direct Loans"), 20 U.S.C. § 1087a, *et seq.* *See* MOHELA's Answer, First Defense.

10. MOHELA is, and at all times material hereto was, a public instrumentality and a body politic and corporate of the State of Missouri created by Missouri state statute (*see* RSMo. § 173.360), which is "performing a public function" as a "a separate public instrumentality of the state." RSMo. § 173.415.

11. MOHELA was completely uninvolved in the application for, approval of, or funding of the student loans in Plaintiff's name.

12. However, almost immediately after the disbursement of the student loans, the Department transferred servicing to MOHELA.

13. When Plaintiff began to allege that she should not be responsible for the student loans, MOHELA worked diligently with Plaintiff to help her through the federally-mandated process (*see* 34 CFR § 685.215) required to discharge the Direct Loans on the basis of identity theft. *See* MOHELA's Answer, at ¶¶ 31, 33, 39, and Ninth Defense.

14. The ultimate decision regarding Plaintiff’s identity theft application was to be made by the Department.

15. The Department denied Plaintiff’s application for a discharge based on identity theft, and MOHELA continues to service the student loans at the behest of the Department, which owns the loans. *See* MOHELA’s Answer, at ¶¶ 40-41.

16. Plaintiff alleges three alternative claims against MOHELA: (i) violations of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692, *et seq.* (Count I); (ii) violations of the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681s-2(b) (Count II); and, (iii) violations of the South Carolina Consumer Identity Theft Protection Act (the “Act”), S.C. Code § 37-20-110, *et seq.* (Count V). *See* FAC, at ¶¶ 60-75 (Counts I and II), and ¶¶ 90-97 (Count V).

17. Judgment in MOHELA’s favor is warranted on each of Plaintiff’s alternative claims.

18. Plaintiff’s FDCPA claim against MOHELA (Count I) suffers from two fundamental legal deficiencies. *First*, the FDCPA claim fails because MOHELA is not a “debt collector” under the FDCPA, 15 U.S.C. § 1692a(6)(F)(iii), as it began servicing these student loans prior to default. *See* Answer, at Fifth Defense. *Second*, MOHELA is exempted from liability under the FDCPA because its actions were, at all pertinent times, incidental to its “bona fide fiduciary obligation” to the Department, 15 U.S.C. § 1692a(6)(F)(i). *See* MOHELA’s Answer, at Sixth Defense.

19. Plaintiff’s FCRA claim against MOHELA (Count II) fails as a matter of law because the Complaint fails to plausibly allege that MOHELA furnished any information that was inaccurate or incomplete, especially in view of the Department’s conclusion that Plaintiff was not entitled to a discharge on the basis of identity theft. Moreover, Plaintiff failed to plead key factual

allegations supporting her claim that MOHELA did not do a reasonable investigation under 15 U.S.C. § 1681s-2(b) of Plaintiff's disputes.

20. Plaintiff's claim against MOHELA (Count V) under the Act also fails as a matter of law. The statutory provisions relied upon by the Complaint apply to the credit reporting agencies only, not MOHELA, the furnisher of the information. *See* MOHELA's Answer, at Twenty-Third Defense. Therefore, Plaintiff has not stated a viable state statutory claim against MOHELA.

21. For the foregoing reasons, as well as the additional reasons fully set forth in MOHELA's Memorandum in Support of its Motion for Judgment on the Pleadings filed contemporaneously herewith, the Court should enter judgment on the pleadings on the FAC's three alternative claims against MOHELA and dismiss them with prejudice.

WHEREFORE, Defendant Higher Education Loan Authority of the State of Missouri respectfully requests that this Court enter an order granting its motion for judgment on the pleadings with respect to Plaintiff's claims in the First Amended Complaint and providing such additional relief as this Court deems just and proper.

This the 20th day of June, 2022.

Respectfully submitted,

/s/John B. Kelchner

John B. Kelchner, Fed. ID No.: 6987

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